220005

STATE OF SOUTH CAROLINA)
)
(Caption of Case))
)
Carolyn L. Cook,)
Complainant,)
)
v.)
)
Alpine Utilities, Inc.)
Respondent.)
)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire **SC Bar Number:** 68269

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition**

☐ **Request for item to be placed on Commission's Agenda expeditiously**

☒ **Other:**

INDUSTRY (Check one)

- ☐ Electric
- ☐ Electric/Gas
- ☐ Electric/Telecommunications
- ☐ Electric/Water
- ☐ Electric/Water/Telecom.
- ☐ Electric/Water/Sewer
- ☐ Gas
- ☐ Railroad
- ☒ Sewer
- ☐ Telecommunications
- ☐ Transportation
- ☐ Water
- ☐ Water/Sewer
- ☐ Administrative Matter
- ☐ Other:

NATURE OF ACTION (Check all that apply)

☐ Affidavit	☒ Letter	☐ Request
☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Answer	☐ Motion	☐ Request for Investigation
☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Application	☐ Petition	☐ Resale Amendment
☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Exhibit	☐ Promotion	☐ Tariff
☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Interconnection Agreement	☐ Protest	
☐ Interconnection Amendment	☐ Publisher's Affidavit	
☐ Late-Filed Exhibit	☐ Report	

Print Form Reset Form

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October 30, 2009

VIA HAND-DELIVERY
The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Carolyn L. Cook v. Alpine Utilities, Inc.; Docket No. 2008-360-S

Dear Mr. Terreni:

On behalf of Alpine Utilities, Inc. ("Alpine), I am writing regarding the October 28, 2009, letter to you from counsel for Carolyn L. Cook ("Mrs. Cook") in connection with the above-referenced docket. Therein, counsel for Mrs. Cook states that, following the filing of her complaint on March 27, 2009 ("Complaint") and subsequent correspondence from him and the South Carolina Office of Regulatory Staff ("ORS") "no further action was taken by the Commission on the Carolyn L. Cook Complaint." Further, counsel for Mrs. Cook states that, because the complaint proceeding initiated by Happy Rabbit, LP ("Happy Rabbit") has concluded, Mrs. Cook is "prepared to move forward with discovery."

Initially, Alpine would note that the assertion that the Commission has not taken any action on the Complaint is incorrect. By Order No. 2009-496, dated July 17, 2009 ("Order"), the Commission clearly ruled that the "Happy Rabbit/Carolyn L. Cook matters have been dismissed without prejudice."[1] Order at 2. While Happy Rabbit petitioned the Commission to reconsider its Order dismissing Happy Rabbit's and Mrs. Cook's complaint and ultimately appealed the Commission's decisions to the South Carolina Court of Appeals, Mrs. Cook did not. Therefore, the dismissal of Mrs. Cook's Complaint without prejudice is the law of the case and no complaint on this matter is pending before the Commission.

Even if Happy Rabbit's appeal of this matter preserved Mrs. Cook's Complaint, which Alpine expressly denies, on October 27, 2009, Alpine moved the Court of Appeals to dismiss the

[1] In fact, Happy Rabbit and Mrs. Cook have acknowledged that the Commission's decision in this matter dismissed both complaints. See Complainants' Petition for Clarification/Alternative Relief at 1 (April 22, 2009) ("The [Commission] issued its oral decision on Wednesday, April 22, 2009, **on both Complaints**, ruling *inter alia*, that **both Complaints** should be dismissed without prejudice.") (emphasis added).

appeal of this matter for Happy Rabbit's failure to timely serve its Notice of Appeal. On October 28, 2009, Happy Rabbit informed the Court of Appeals that it would not contest Alpine's Motion to Dismiss and filed a Motion to Withdraw its appeal. See Attachment A. Because the withdrawal will conclude the appeal of the Commission's orders relating to the complaints of Happy Rabbit and Mrs. Cook, the Commission's dismissal of these actions will, again, be the law of the case. Consequently, there will not be a pending proceeding before the Commission in which the discovery purportedly sought to be served by Mrs. Cook could be conducted. See, e.g., R. 103-833.A ("Any material relevant to the subject matter involved **in the pending proceeding** may be discovered..."); R. 103-834 ("Any party of record **to a proceeding** may...take the testimony of any witness by deposition."); Rule 26 (b)(1), SCRCP ("Parties may obtain discovery regarding any matter which is relevant to the subject matter involved **in the pending action**.") (emphasis added to all).

Moreover, the Commission's dismissal of Mrs. Cook's Complaint was without prejudice pending a ruling by the circuit court regarding the then-pending litigation between Mrs. Cook, Happy Rabbit and Alpine. Order at 1. By its order dated September 17, 2009, a copy of which is attached hereto as Attachment B, the circuit court dismissed that action pursuant to Rule 12(b)(6), SCRCP, finding the facts alleged by Mrs. Cook and Happy Rabbit did not give rise to a violation of S.C. Code Ann. § 27-33-50.[2] Happy Rabbit and Mrs. Cook appealed this decision which is currently before the Court of Appeals. Therefore, even if the Complaint is still pending before the Commission as asserted by Mrs. Cook, which Alpine expressly denies, the circumstances upon which the Commission based its dismissal of Mrs. Cook's complaint still exist.[3] Accordingly, the Commission should reject any request by Mrs. Cook for a hearing or to conduct discovery on this matter.

Finally, as a matter of information, please be advised that once the Court of Appeals issues its order granting Happy Rabbit's withdrawal of its appeal, the complaint filed by Happy Rabbit will be finally concluded. Thereafter, Alpine intends to proceed under Commission Regulation R. 103-535.1 to collect the current past due balance of $13,179.60 for sewer services rendered to Happy Rabbit since August 2008.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

Benjamin P. Mustian

BPM/cf
Enclosures

[2] As the Commission is well aware, both Mrs. Cook's and Happy Rabbit's complaints filed with the Commission are premised upon an alleged violation of § 27-33-50.

[3] Alpine further notes that Mrs. Cook is not a current customer of Alpine and, therefore, does not have standing to maintain a complaint with the Commission.

cc: Richard L. Whitt, Esquire
Nanette S. Edwards, Esquire

Austin & Rogers, P.A.

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October 28, 2009

The Honorable V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re:
- Happy Rabbit v. Alpine Utilities, Inc. (Case Tracking Number: 2009-140068)
- **Motion to Withdraw Appeal, pursuant to Rule 260(c) SCACR**

Dear Ms. Allen:

Enclosed is Appellant's Motion to Withdraw Appeal and filing fee, relevant to the above-referenced pending Appeal, pursuant to Rule 260(c) of the South Carolina Appellate Court Rules.

We appreciate your correspondence of October 27, 2009, relevant to this Appeal, but we believe that our Motion to Withdraw will moot the requirement set forth in your correspondence. Please advise if you have any questions or concerns and we appreciate your assistance in this matter.

Respectfully submitted,

Richard L Whitt

Timothy F. Rogers
Richard L. Whitt
Jefferson D. Griffith, III

RLW/krc
Enclosures

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

PETITION FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Elizabeth B. Fleming, Chairman

Docket No. 2008-360-S

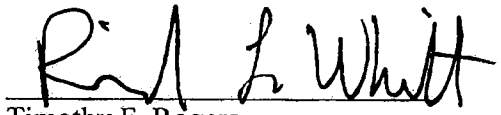
Happy Rabbit, LP on Behalf of Windridge Townhomes ..... Complainant/Appellant

v.

Alpine Utilities, Incorporated ..... Respondent

PROOF OF SERVICE

I certify that I have served Respondent Alpine Utilities Incorporated and the South Carolina Office of Regulatory Staff with Appellant's Motion to Withdraw Appeal by causing a copy to be hand delivered, on October 28, 2009, addressed to their attorney of record, John M. S. Hoefer, at his office at 930 Richland Street, Columbia, S.C. 29201 and Nanette S. Edwards, Esquire, at her office at the South Carolina Office of Regulatory Staff at 1401 Main Street, Suite 900, Columbia, S.C. 29201, respectively.



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Columbia, South Carolina
October 28, 2009

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Elizabeth B. Fleming, Chairman

Docket No. 2008-360-S

Happy Rabbit, LP on Behalf of Windridge Townhomes..... Complainant/Appellant

v.

Alpine Utilities, Incorporated ..... Respondent

MOTION TO WITHDRAW APPEAL

(Rule 260(c) SCACR)

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1. Respondent Alpine herein filed a Motion to Dismiss this Appeal on October 27, 2009.

2. Appellant Happy Rabbit, LP on Behalf of Windridge Townhomes, (hereinafter as, "Happy Rabbit") has decided not to contest the Motion, but instead to withdraw their Appeal.

3. Accordingly Appellant Happy Rabbit, through counsel, hereby withdraws this Appeal pursuant to Rule 260(c) of the South Carolina Appellate Court Rules.

4. Respondents herein are served with this Motion and correspondence to the Court on October 28, 2009.

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Attorneys for Appellant

Columbia, S.C.

October 28, 2009

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Happy Rabbit, a South Carolina Limited Partnership, and Carolyn D. Cook, Plaintiffs, v. Alpine Utilities, Inc., Defendant.	Civil Action No. 2008-CP-40-06619 **ORDER OF DISMISSAL**

This matter is before me on the motion of Defendant Alpine Utilities, Inc. ("Alpine") to dismiss the Complaint[1] ("Complaint") of Plaintiffs Happy Rabbit, a South Carolina Limited Partnership ("Happy Rabbit"), and Carolyn D. Cook ("Mrs. Cook") pursuant to Rule 12(b)(6), SCRCP. In addition to the Complaint and Alpine's motion and supporting memorandum dated July 1, 2009, the Court also has before it Plaintiffs' December 11, 2008, return to the motion, their April 22, 2009, supplemental return to the motion, and their July 1, 2009, memorandum in opposition to the motion. For the reasons set forth below, Alpine's motion is granted and the Complaint is dismissed.

[1] The Plaintiffs filed and served their original complaint on September 12, 2008. They amended their original complaint as a matter of course under Rule 15(a), SCRCP, on March 18, 2009, to, *inter alia*, state a cause of action under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. (1976, as amended) ("SCUTPA"). References herein to the "Complaint" include the amended complaint. Plaintiffs have moved to further amend their Complaint to assert a class action claim and to effectively withdraw their SCUTPA claim. At the July 9, 2009, hearing in this matter, however, counsel for Plaintiffs advised the Court that Plaintiffs intend to withdraw their motion to further amend the Complaint in the event that their motion to certify a class action under Rule 23, SCRCP, also heard by the Court on that date, is denied and thereby preserve their SCUTPA claim. Because the Court concludes that Alpine's motion to dismiss should be granted, no SCUTPA claim is left to be pursued and the motion for class certification is therefore moot.

I. Factual Background

The pertinent facts alleged in the Complaint are undisputed. The Plaintiffs are the former and current owners of a residential rental complex consisting of twenty three buildings of two dwelling units each which they rent to third party tenants. Alpine is a public utility providing sewer service in Richland County. In order to secure sewer service to the complex, Plaintiffs entered into a customer relationship with Alpine and paid Alpine on a monthly basis for sewer services rendered. The gist of Plaintiffs' claim is that it was and is unlawful for Alpine to continue maintaining a utility/customer relationship with Plaintiffs from and after the effective date of S.C. Code Ann. § 27-33-50 (2007), which was July 1, 2002, and that Alpine was and is required under that statutory provision to establish and maintain a utility/customer relationship with each of the individual third party tenants in the complex. Plaintiffs allege that the enactment of S.C. Code Ann. § 27-33-50 relieved them from their obligation as the customer of Alpine to pay Alpine for the utility services rendered to the complex and required Alpine to establish customer accounts with the individual tenants and "to change the character of sewer services [provided]" to the complex. Plaintiffs also allege that, as early as October 6, 2003, James C. Cook ("Mr. Cook"), husband of Mrs. Cook[2], contacted Alpine regarding § 27-33-50 and demanded that Alpine terminate the sewer services being provided to the complex and establish customer accounts with the individual tenants

[2] Although not stated in the Complaint, Alpine asserts that Mr. Cook is also a general partner of Happy Rabbit and a retired member of the South Carolina Bar, in addition to being Mrs. Cook's husband. And, at the hearing on the within motion, counsel for Plaintiffs referred to Mr. Cook as "my client" and a "retired attorney." Regardless, it is apparent from paragraph 9 of the Complaint and Plaintiffs' July 1, 2009, memorandum in opposition to the motion that Plaintiffs had authorized Mr. Cook to act as their representative.

of the complex. Plaintiffs seek actual damages from Alpine of approximately $22,000 (which consists of the sewer service fees paid by Plaintiffs to Alpine for the three years preceding the filing of their complaint) and punitive damages for the alleged violation of § 27-33-50 plus treble damages and attorneys fees for the alleged violation of SCUTPA.

II. Rule 12(b)(6) Standard

In considering this motion, the Court must base its ruling solely on the allegations contained in the Complaint. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). The Court must grant the motion if, viewing the facts in the light most favorable to the plaintiffs, their allegations, including reasonable inferences, do not support relief under any theory of the case. *E.g., Chewning v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001).

III. Section 27-33-50

As noted above, Plaintiffs' causes of action are based upon an alleged violation of § 27-33-50 by Alpine. By way of 2002 S.C. Acts 336 and 2003 S.C. Acts 63, the South Carolina General Assembly amended the South Carolina Code of Laws to add § 27-33-50, which reads as follows:

> (A) Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.
>
> (B) An entity or utility providing gas, electric, water, sewerage, or garbage services must not:
>
> (1) require a landlord to execute an agreement to be responsible for all charges billed to premises leased by a tenant; or
>
> (2) discontinue or refuse to provide services to the premises the tenant leases based on the fact that the landlord refused to execute an agreement to be responsible for all the charges billed to the tenant leasing that premises.

(C) This provision does not apply to a landlord whose property is a multi-unit building consisting of four or more residential units served by a master meter or single connection.

IV. Discussion/Analysis

A. MEANING OF SECTION 27-33-50

Alpine contends that the Complaint fails to state facts sufficient to constitute a cause of action because §27-33-50 does not proscribe Alpine's conduct as alleged by Plaintiffs. For the reasons discussed below, the Court finds as follows:

1. *Plaintiffs have not stated a claim under the plain meaning of § 27-33-50*

Plaintiffs contend that the plain meaning of § 27-33-50 is that Alpine is precluded from "requiring Plaintiffs to be responsible for sewer services to their forty-six tenancies (twenty-three duplex buildings)." Alpine contends that the plain meaning of § 27-33-50 only precludes a utility from requiring a landlord to become responsible for a tenant's account with the utility.

The decision of the Court of Appeals in *Thompson ex rel Harvey v. Cisson Constr. Co.* 377 S.C. 137, 659 S.E.2d 171 (Ct. Apps. 2008) (cert. granted June 24, 2009) provides a comprehensive explication of the plain meaning rule that governs the interpretation of statutes. Therein, the Court of Appeals stated that

> The cardinal rule of statutory interpretation is to determine the intent of the legislature. All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. If a statute's language is

> unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.

Id. 377 S.C. at 156-157, 659 S.E.2d at 180-182 (*internal citations and quotations omitted*). Applying the foregoing rules of interpretation, it is clear that § 27-33-50 does not prohibit a utility from billing the owner of a building, with three or less dwelling units, for utility services provided to the building under an account for utility service that exists between the owner of the building and the utility. In fact, the statute is silent regarding existing utility/customer relationships involving the owner of such a building such as is alleged in the Complaint. Further, the statute only precludes a utility from requiring the owner of such a building "to execute an agreement to be responsible for all charges billed to premises leased by a tenant" or "to execute an agreement to be responsible for all the charges billed to the tenant leasing that premises" and specifically shields such a landlord from liability for the account a tenant of the building has with the utility. The Complaint does not allege that Alpine has required Happy Rabbit to execute any such agreement and makes clear that its tenants have no accounts with Happy Rabbit. Accordingly, no cause of action has been stated under the plain language of the statute.

2. *Even if the statute is ambiguous, it cannot be interpreted in the manner Plaintiffs contend*

Even if the plain language of § 27-33-50 did not compel the result asserted by Alpine, a common sense reading of the statute employing the rules of statutory

construction would. In *Thompson,* the Court of Appeals described the rules applicable to construction of a statute for which legislative intent is not apparent from its plain language as follows:

> If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. In construing a statute, the court looks to the language as a whole in light of its manifest purpose. A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of the words. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.

Id. 377 S.C. at 158, 659 S.E.2d at 181-182 (*internal citations and quotations omitted*). Plaintiffs seek to have the Court read § 27-33-50(A) as precluding the maintenance of a pre-existing utility/customer relationship between Plaintiffs and Alpine.[3] In addition to ignoring the express language in that very subsection providing that "a landlord is not liable for a tenant's account," the Plaintiffs' interpretation necessarily reads certain clauses of the statute in isolation inasmuch as the statute contains further, specific prohibitions against a utility making a landlord "execute an agreement" to be responsible or liable for "charges billed to premises

[3] In Complaint ¶ 9, Plaintiffs allege that a utility customer relationship existed between them and Alpine. In Complaint ¶¶ 11-12, Plaintiffs allege that they "did not agree in writing to be responsible for their tenant's [*sic*] sewer service", and that, because Alpine "refus[ed] to terminate sewer service as demanded by [Mr. Cook] on October 6, 2003" and "require[ed] Plaintiffs to be responsible for the sewer services of their forty-six tenancies", Alpine has violated § 27-33-50(A).

leased by a tenant" and "charges billed to the tenant leasing the premises." See § 27-33-50(B)(1) and (2). A construction of § 27-33-50 (A) in isolation of these other provisions of the statute is contrary to law. *Thompson, supra.*

Further, the effect of Plaintiffs' reading of the statute would be to allow them to recover charges for utility services that were requested by Plaintiffs to be provided to the residential rental complex they owned, thereby enabling Plaintiffs to lease units in the buildings to third parties. This would result in a windfall for Plaintiffs given that they will have received the benefit of Alpine's services without having to have incurred the cost of same. *See, e.g., Liberty Mut. Ins. Co. v. S.C. Second Injury Fund,* 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005) (holding that the literal meaning of a statute will not be given effect where the result is to create a windfall.) The Court finds that such a reading of the statute is neither just, beneficial, equitable, reasonable nor fair as required by *Thompson, supra.*

Finally, the Court is persuaded by Alpine's argument that the statute cannot have the meaning assigned to it by Plaintiffs and also create a private cause of action available to Plaintiffs. Alpine argues that, because § 27-33-50 does not expressly provide a cause of action for a violation thereof, a cause of action may only be implied if the statute was enacted for the special benefit of a private party. Alpine's argument in this regard is correct. *See Dema v. Tenet Physician Services-Hilton Head, Inc.*, 678 S.E.2d 430, 434, 2009 WL 1587108, 2 (S.Ct., 2009), *Citizens for Lee County, Inc. v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992). Alpine further argues that giving effect to Plaintiffs' interpretation of § 27-33-50 means that contracts existing between utilities and landlords for the provision of sewer service to

properties within the ambit of the statute would be invalidated and that utilities would be required to incur costs to reconfigure their systems to provide for individual services to each rental unit. Alpine asserts that such a reading of § 27-33-50 would result in violations of S.C. Cons. art. I, §§ 13 and 4, respectively unless the taking or impairment were for a public, as opposed to a private, purpose. Thus, Alpine argues, if a private cause of action under § 27-33-50 may be implied, it cannot be for the special benefit of Plaintiffs. The Court agrees with Alpine. Laws interfering with private contractual obligations may only survive an impairment challenge where they involve a legitimate governmental purpose and are reasonable and necessary to serve an important public purpose. *See Rick's Amusement, Inc. v. State*, 351 S.C. 352, 570 S.E.2d 155 (2001), cert. denied, 122 S.Ct. 1909 (2002). Further, because a statute may not be read in a manner which renders it unconstitutional, *Peoples Nat'l Bank v. S.C. Tax Comm'n*, 250 S.C. 187, 156 S.E.2d 769 (1967), § 27-33-50 cannot be interpreted as conferring on landlords the special benefit of being able to require utilities to install additional facilities connecting the landlords' tenants to the utility systems for the benefit of landlords as Plaintiffs assert inasmuch as that would contravene the proscription against taking private property for private use. See Article I, § 13. For these reasons as well, the Court finds that § 27-33-50 may not be interpreted in the manner Plaintiffs contend it should be interpreted.[4]

[4] Plaintiffs argue that Alpine did not raise this argument as a ground for its motion to dismiss and only raised it in its memorandum in support of its motion and in argument to the Court. Alpine contends that the motion to dismiss does address this argument since it asserts that no cause of action has been stated under § 27-33-50. The Court notes that Alpine's motion does state that it is based on South Carolina law and a memorandum to be submitted. The parties exchanged memoranda on July 1, 2009. In addition, Alpine agreed at hearing that Plaintiffs could submit an additional memorandum on this point if Plaintiffs chose to do so. Plaintiffs have not, however, submitted any additional memorandum on this point. Plaintiffs have therefore had ample notice and opportunity to be heard on the point and, because a motion to dismiss under Rule 12(b)(6) may be raised at any time prior to or at trial of the

IV. Conclusion

For the reasons set forth above, the Complaint fails to state facts sufficient to constitute a cause of action under S.C. Code Ann. § 27-33-50 because the facts alleged do not give rise to a violation of the statute. The statute simply does not proscribe the conduct alleged on the part of Alpine. *Chewning, supra.* Plaintiffs' reading of the statute is contrary to the plain meaning of the language employed by the General Assembly and would violate the rules of statutory construction even if the meaning were not plain. Alpine's motion must therefore be granted.

Because the Court is dismissing the lawsuit, it does not address the Statute of Limitations issue.

IT IS THEREFORE ORDERED THAT the Complaint herein be dismissed.

AND IT IS SO ORDERED.

James R. Barber, III
Presiding Judge

Columbia, South Carolina
This 17th day of September, 2009

case, the Court concludes that judicial economy will be served by ruling on the point now instead of later.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2008-360-S

Carolyn L. Cook, Complainant v. Alpine Utilities, Inc., Defendant.	)	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Letter Dated October 30, 2009,** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, SC 29211

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Clark Fancher

Clark Fancher

Columbia, South Carolina
This 30th day of October, 2009.